IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2427 OF 2007

Shomu @ Raj Prem Soneja ...Petitioner

Versus

Suriti Shomu Soneja ...Respondent

Shri J.S.Kini for the Petitioner.

CORAM : ABHAY S.OKA, J.
DATED : JUNE 05, 2007.

P.C.:

1. Heard Advocates appearing for the parties. The Petitioner is the husband and the Respondent is the wife. By this Writ Petition under Article 227 of the Constitution of India, the Petitioner has taken an exception to the order passed by the Family Court by which the Petitioner-husband has been directed to pay interim maintenance at the rate of Rs.3,000/- per month from the date of Application together with costs of Rs.5,000/-.

2. The submission of the learned Advocate for the Petitioner is that in the reply filed by the Petitioner before the trial Court he has made out a clear case that he has been thrown out of family business and he is surviving on monthly salary of Rs.3,300/-. He submitted that the Petitioner has annexed to this Petition a Leave and Licence Agreement which shows that the Petitioner

was thrown out of the family house due to difficulties created by the Respondent and he was required to obtain a residential premises on Leave and Licence under the said Agreement. He states that the case of the Petitioner is substantiated by the said Leave and Licence Agreement. He, therefore, submitted that by no stretch of imagination, interim maintenance could have been fixed at the rate of Rs.3,000/- per month.

3. I have considered the submissions. In the Application under section 24 of the Hindu Marriage Act, 1955 filed by the Respondent, in paragraph No.3 thereof it is alleged as under:

> "3. I say that I have no independent source of income. I am staying with my parents at Jhansi. The petitioner is financially well off. He is in the family business of Manufacturing Scientific Instruments and exporters of Metzer range of microscopes, profile projectors, overhead projectors, analytical instruments and Laboratory Equipments under the name of "METZER OPTO-ELECTRONIC INSTRUMENT PVT.LTD" having their office at 110/113, Himalaya House, 79, Palton Road, Fort, Mumbai 400 001. Annexed hereto and marked as Exhibit "A" is

> the bio data of the Petitioner and his family members, which they had sent to me on their business letter-head prior to the marriage. When the marriage proposal was fixed I was informed that the Petitioner's sole income was Rs.50,000/- p.m from the family business. The total income from this business is nothing less than Rs.2 lacs per month after deducting expenses. Apart from that, the Petitioner and his parents enjoy a high standard of living. The matrimonial home itself consists of six bed rooms, hall and kitchen. Each bedroom has an A.C and is furnished with all modern amenities. The Petitioner owns Maruti 800".

The Petitioner has replied to said averments in paragraph No.10 of his reply. In the said reply it is stated as under:

> "It is correct to say that my father have family business of manufacturing scientific instruments and exports of Metzer range of microscopes profile projectors over head projectors analytical instruments and laboratory equipments under the name of Metzer Opto Electronics Instruments Pvt. Ltd. But the same belongs to my father and I say that my

> father and my family members have been expelled me from my house due to problems created by the respondent. I crave leave to refer to rely upon proofs to the same as and when produced. I say that, I have also expelled from the family business by my father and my family members and my sole income from the family business is maximum Rs.3,300/- per month as a salary given to me".

Thus, the Petitioner has admitted that there is a family business of manufacturing scientific instruments and exports of Metzer range of microscopes, profile projectors, overhead projectors, analytical instruments and laboratory equipments under the name of "Metzer Opto-electronic Instrument Pvt. Ltd. His contention is that he has been expelled from his family business by his father and his family members. Thus, he has admitted that he was very much involved in the family business. The learned Judge of the Family Court found that no documentary evidence was produced on record to show that the Petitioner has been expelled from the said business. In absence of any material produced by the Petitioner in that behalf, the learned Judge has discarded the case specifically made out by the Petitioner that he has been expelled from the family business. The Petitioner has not disclosed in his reply

the exact income which he was receiving from his family business. In view of the failure of the Petitioner to produce the material documents, the learned Judge of the Family Court has rightly discarded the case made out by the Petitioner as regard his expulsion from family business and that he surviving only on a meagre monthly salary of Rs.3,300/-.

4. As the Petitioner has not chosen to disclose the income received from the family business, the learned Judge has fixed the interim maintenance at Rs.3,000/- per month. Considering the admitted nature of the family business and the conduct of the Petitioner of not substantiating the stand taken in the reply, a reasonable amount of Rs.3,000/- per month has been fixed by the learned Judge of the Family Court. As the Petitioner could not substantiate his case of expulsion from family business, it is difficult to accept the case made out by the Petitioner in this Petition by producing a copy of Leave and Licence Agreement.

5. No case is made out for interference with the impugned order. Writ Petition is rejected.

6. It is obvious that observations made in this order are only for limited purposes of considering the merits of the order passed by the trial Court granting

interim maintenance.

JUDGE